

**CITY OF ROCKVILLE  
ROCKVILLE, MARYLAND**

**INVITATION FOR BID NO 40-04  
DESIGN, CONSTRUCTION & PRE-ASSEMBLY SITE WORK AT MUNICIPAL SWIM CENTER  
AND FURNISH & INSTALL WATER PLAY SYSTEM (SPRAY GROUND)**

Sealed proposals, addressed to the City of Rockville, Maryland for **DESIGN, CONSTRUCTION & PRE-ASSEMBLY SITE WORK AT MUNICIPAL SWIM CENTER INCLUDING FURNISHING & INSTALLATION OF WATER PLAY SYSTEM (SPRAY GROUND)**, will be received at the Purchasing Division, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland 20850 until **2:30 P.M., WEDNESDAY, NOVEMBER 12, 2003.** The bidder assumes full responsibility for the timely delivery of a bid to the designated location. Bids delivered to any other office or location will not be considered. All bids will be publicly opened after the time set for receipt of bids and read in the Boards and Commissions Conference Room at the same address.

**BID DOCUMENTS**

Solicitations are available several ways:

1. By downloading the document from the City's website at:  
<http://www.rockvillemd.gov>
2. Call us at (240) 314-8430 and we will mail the IFB or RFP to you, or
3. You may visit the Purchasing Division and pick up a bid or proposal packet between the hours of 8:30 a.m.–5:00 p.m., Monday through Friday, excluding government holidays. We are located at Rockville City Hall, 111 Maryland Avenue, Rockville, MD 20850

**SUBMISSION OF BID**

Bid proposal forms in duplicate shall be submitted in a sealed envelope. The face of the envelope shall contain the date and time of bid opening and bid number.

**PROJECT DESCRIPTION**

The project consists of **(1)** all design, construction and pre-assembly work including providing all labor, material, equipment, and supervision necessary to install a deck, plumbing, and filter equipment, and **(2)** furnish and install a Water Play System (Spray Ground) at the City's Municipal Swim Center in accordance with the technical specifications and drawings contained herein. There is no charge for specifications and drawings.

**PRE-BID MEETING AND SITE VISIT**

A pre-bid meeting and site visit will be held at **9:00 AM, Monday, November 3, 2003, at the Rockville Municipal Swim Center located at 355 Martins Lane, Rockville, MD 20850.** Bidders are strongly encouraged to attend the meeting and site visit in order to fully acquaint themselves with the existing conditions, and be fully informed as to any difficulties and restrictions attending the performance of this contract. To obtain directions to the site please call Mr. Philip Ashworth, Aquatics Facilities Manager, (240) 314-8753.

**PROJECT INQUIRIES/ADDENDUMS** Inquiries concerning this project should be directed to Mr. Philip Ashworth, Aquatics Facilities Manager, at (240) 314-8753, or e-mail: [pashworth@rockvillemd.gov](mailto:pashworth@rockvillemd.gov). Verbal

explanations or instructions given by a City employee to a bidder will not be binding by the City. Information given to a bidder, in response to a request, will be furnished to all bidders as an addendum to these specifications if such information is deemed necessary for the preparation of bids, or if the lack of such information would be detrimental to the uninformed bidder. Such addendums will be considered binding only when issued by the City's Purchasing Division. Requests for explanations or clarifications must be received prior to Wednesday, November 5, 2003.

#### **BIDDING/CONTRACTUAL INQUIRIES**

Bidding or contractual inquiries concerning the preparation or submission of a bid should be directed to Mr. Basil Boobas, Purchasing Supervisor at (240) 314-8430, or e-mail: [bboobas@rockvillemd.gov](mailto:bboobas@rockvillemd.gov).

#### **AWARD**

Award will be made to the lowest responsive and responsible bidder complying with all provisions of the Invitation for Bid, provided the bid price is reasonable and in the best interest of the City to accept.

#### **AGREEMENT**

The successful proposer shall be required to complete a two party standard form of agreement. See sample agreement attached.

#### **BID BOND**

A bid bond in the amount of 5% of the total bid amount must be submitted with the bid. Please refer to paragraph 17 of the General Conditions & Instructions To Bidders – Construction.

#### **PERFORMANCE AND PAYMENT BONDS**

The successful bidder will be required to submit Performance and Payment Bonds in the amounts as stipulated in paragraph 18 of the General Conditions & Instructions To Bidders - Construction. See sample performance and payment bonds attached.

#### **INSURANCE**

The successful proposer shall be required to furnish certificates of insurance. Please refer to paragraph 19 of the General Conditions and Instructions To Bidders - Construction.

#### **LIQUIDATED DAMAGES**

The successful bidder shall be subject to payment of liquidated damages in the amount of \$400.00 per calendar day for failure to complete the work on time. Please refer to paragraph 26 of the General Conditions and Instructions To Bidders - Construction.

#### **NOTICE TO BIDDERS**

Companies not incorporated in the State of Maryland must be in compliance with the State of Maryland Code of Regulations Title 21, State Procurement Regulations in order to enter into a contract with the City. "Pursuant to 7-201 et seq of the Corporations and Associations Article the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, MD 21201 before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation." Within the State of Maryland please call 1-888-246-5941. Companies located outside Maryland should call 1-410-767-1006, or e-mail: [charterhelp@dat.state.md.us](mailto:charterhelp@dat.state.md.us).

**US TREASURY IDENTIFICATION NUMBER**

Bidders must supply with their bids their US Treasury Department Employers' Identification Number as such number is shown on their Employer's Quarterly Federal Tax Return (US Treasury Department Form No. 941). This number shall be inserted on the Bid Sheet in the space provided.

**QUALIFICATION TO CONTRACT WITH PUBLIC BODY**

Bidders must be qualified to bid in the state in accordance with Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland which ordains that any person convicted of bribery (upon acts committed after July 1, 1977) in furtherance of obtaining a contract from the State or any subdivision of the State of Maryland shall be disqualified from entering into a contract with the City.

**REJECTION OF BIDS**

The city reserves the right to reject any or all bids in part or full and to waive any technicalities or informalities as may best serve the interests of the city.

**DISABILITY INFORMATION**

Any individuals with disabilities who would like to receive the information in this document in another form may contact the ADA Coordinator at (240) 314-8100; TDD (240) 314-8137



**CITY OF ROCKVILLE  
MARYLAND  
GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS  
CONSTRUCTION  
(PKS/BONDS – 8/02)**

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1. **PRE-BID MEETING:** A pre-bid meeting may be held for the purpose of describing the project and for answering any questions prospective bidders may have. If applicable, time and date will be shown on the bid announcement page

2. **SUBMISSION OF BIDS:** All bids are to be submitted in a sealed envelope to the Purchasing Office clearly marked with the invitation for bid number. The following forms must be submitted:

- Bid proposal page(s) in duplicate
- Non-conclusion/non-conviction affidavit
- Bid Bond
- Reference sheet
- Other forms as required in the Special Provisions portion of the bid document.

The bid proposal form must be typed or written in ink. Conditional bids and bids containing escalator clauses will not be accepted. All bids must be regular in every respect and no interlineation, excisions or special conditions shall be made or included in the form of the bid. Bids must contain an original signature, in the space provided, of an individual authorized to bind the bidder

3. **LATE BIDS:**

It is the bidder's responsibility to assure delivery of the bid at the proper time to the designated location. Bids delivered to any other office or location will not be considered. All bids will be publicly opened after the time set for receipt of bids and read aloud. Bidders may attend bid openings.

4. **ACCEPTANCE OF BIDS:** The City will accept or reject any or all bids on any or all items within sixty (60) days after the date of bid opening. Bids may not be withdrawn during that period.

5. **BID WITHDRAWAL:** Requests for withdrawal of bids prior to the bid opening shall be transmitted to the Eileen Morris, Contracts Officer, in writing.

6. **BID AWARD:** Award will be made to lowest responsive and responsible bidder complying with all provisions of the Invitation for Bid, provided the price is reasonable and in the best interest of the City to accept. The City reserves the right to award by individual commodities/services, group, all or none or any combination thereof. When a group is specified, all items in the group must be bid.

In determining the responsibility of a bidder, the following criteria will be considered:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the services required;
- b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- c. The character, integrity, reliability, reputation, judgement, experience and efficiency of the bidder;
- d. The quality of performance on previous contracts or services;
- e. The previous and existing compliance by the bidder with laws and ordinance relating to the contract or service;
- f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- g. The quality, availability and adaptability of the goods or services to the particular use required;
- h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- i. Whether the bidder is in arrears to the City or a debt or contract or is in default on a surety to the City;
- j. Such other information as may be secured by the City having a bearing on the decision to award the contract.

7. **ADDENDA:** All addenda issued after the Invitation for Bids and before the opening of bids shall be covered in the bid and in closing the contract shall become a part thereof. Bidders are required to acknowledge the addenda by one of the following methods; it is the responsibility of the bidder to make inquiry as to addenda issued:

- List the number of the addenda on the bid sheet
- Return a copy of the addenda with the bid
- Initial in person at City Hall receipt of the addenda

8. **ERRORS IN BIDS:** When an error is made in extending total prices, the unit price will govern. Erasures in bids must be initialed by the bidder. Carelessness in quoting prices or in preparation of the bid will not relieve the bidder from performing the contract. Errors discovered after public

opening cannot be corrected and the bidder will be required to perform if the bid is accepted.

9. **MISTAKES:** Bidders are expected to be thoroughly familiar with all bid documents, including all addenda. No consideration will be granted for any alleged misunderstanding of the intent of the contract documents. In the process of assembling and binding the bid documents individual pages or drawings may have been inadvertently omitted. Each bidder shall carefully and thoroughly examine these bid documents for completeness. No claim of any bidder will be allowed on the basis that these bid documents are incomplete.
10. **PRICES:** Bids must be submitted on a firm, fixed price, F.O.B. destination basis only unless otherwise specified herein.
11. **DISCOUNTS:** All discounts other than prompt payment are to be included in the bid price. Cash discounts will not be considered in determining the lowest net cost for bid evaluation purposes.
12. **INTEREST IN MORE THAN ONE BID AND COLLUSION**  
Multiple bids received in response to a single solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names will be rejected. Reasonable grounds for believing that a bidder is interested in more than one bid for a solicitation both as a bidder and as a subcontractor for another bidder, will result in rejection of all bids in which the bidder is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two or more bidders submitting a bid for the work. Any or all bids may be rejected if reasonable grounds exist for believing that collusion exists among any bidders. Bidders rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.
13. **QUALIFICATION OF THE BIDDER:** The City shall have the right to take such steps as it deems necessary to determine the responsibility of the bidder to perform the obligations under the contract and the bidder shall furnish to the City all such information for this purpose as the City may request. The right is reserved to reject any bid where an investigation of available information does not satisfy the City that the bidder is qualified to carry out the terms of the contract.
14. **INSPECTION OF THE WORK SITE:** Each bidder shall visit the site of the proposed work and become fully acquainted with the existing conditions and fully informed as to any facility involved, and the difficulties and restrictions attending the performance of this contract. Applicable drawings, technical specifications and contract documents should be thoroughly examined. The successful bidder shall in no way be relieved of any obligation due under the executed contract by the

failure to examine any form of legal instrument or to visit the site.

15. **RISK OF LOSS AND CONDITION OF SITE:** The City makes no representation and assumes no responsibility for the condition of the site or applicable structures on the site. The contractor shall accept the site and the contents thereon in the condition in which they are represented. Any damages or loss whatsoever while the contract is in effect (whether by reason of fire, theft, breakage or other happenings) shall not relieve the contractor from any obligations under this contract.

The contractor shall store any materials on site as not to damage the materials and shall maintain such storage areas, as directed by the City, in hazard free condition.

16. **SUBCONTRACTORS:** Nothing contained in the contract documents, shall create any contractual relationship between the City and any subcontractor or sub-subcontractor. Potential contractors who will subcontract the delivery, installation, or portion of the work herein described will submit with their bids the following information: 1) A description of the items to be subcontracted, 2) the subcontractor name, address, and telephone number, and 3) the nature and extent of the work utilized during the life of the contract.

Subcontractors shall be considered agents of the contractor, who shall be held fully accountable for all of the subcontractor services, labor, and materials relative to the contract.

17. **BID BOND:** Bids must be accompanied by a certified check or bid bond for five percent (5%) of the total amount of the bid, made payable to the Mayor and Council of Rockville. Bonds must be issued by a surety licensed to do business in the State of Maryland.
18. **EXECUTION OF AGREEMENT/BONDS:** Subsequent to award and within fifteen (15) calendar days after the prescribed forms are presented to the contractor, the contractor shall execute and deliver to the City required performance bond for 100% of the bid amount. For a contract exceeding One Hundred Thousand Dollars the payment bond shall be in an amount equal to 100% of the bid amount. For a contract exceeding twenty-five Thousand Dollars (\$25,000) the bond shall be in an amount equal to fifty percent (50%) of the bid amount executed by a surety company authorized to do business in the State of Maryland. The successful bidder may request that in lieu of bonds, the City accept the equivalent in the form of a certified check or other security.

Such requests will be accepted or rejected by the City Manager. If rejected, the successful bidder will be required to furnish the bonds or forfeit the bid bond. Failure of the successful bidder to execute the agreement and supply the required forms within fifteen (15) calendar days shall constitute a default. The successful bidder shall forfeit to the

City as liquidated damages for such failure or refusal an amount in cash equal to the security deposited with the bid. The City may either award the contract to the next low responsive and responsible bidder or re-advertise the bids, and may charge against the original bidder, the difference between the amount of the bid and the amount for which a contract for the work is subsequently executed. If a more favorable bid is received by a re-advertising, the defaulting bidder shall have no claim against the City for a refund.

19. **INSURANCE:** Prior to the execution of the contract, the Contractor must obtain at their expense and keep in force and effect during the term of the contract including all extensions, the insurance specified below, with an insurance company licensed or qualified to do business in the State of Maryland. The Contractor must submit to the Purchasing Office a certificate of insurance prior to the start of any work. The certificate must show the bid number and name of the project. The Mayor and Council, City of Rockville must be named as an additional insured on all liability policies. Sixty days written notice to the City of cancellation or material change in the policy is required. In no event may the insurance coverage be less than shown below.

Unless otherwise described in this contract the successful contractor and subcontractors will be required to maintain for the life of the contract and to furnish the City evidence of insurance as follows:

<u>Commercial General Liability Insurance</u>	Bodily Injury \$500,000 each occurrence Property Damage \$100,000 each occurrence
Blanket Contractual Coverage Property Damage	Bodily Injury \$500,000 each occurrence \$100,000 each occurrence
Independent Contractor Coverage	Bodily Injury \$500,000 each occurrence Property Damage \$ 100,000 each occurrence
Products and Completed Operations Coverage	\$500,000 aggregate (combined limit applicable to Bodily Injury and PropertyDamage)
Personal Injury Coverage (Sections A, B, and C)	\$500,000 aggregate
<u>Workman's Compensation Insurance (Sections A and B)</u>	Section A - Statutory limits of State of Maryland

Section B - (Employer's Liability)  
(\$100,000 each accident)

Comprehensive Automobile Liability Insurance Bodily Injury \$250,000 each person  
\$500,000 each occurrence

(Applicable to owned, non-owned and hired vehicles) Property Damage \$300,000 each occurrence

The Contractor shall not commence any work under the Contract until a written Purchase Order is received from the Contract Officer

Alternative insurance requirements, when outlined under the special provisions of this contract, shall take precedence over the above requirements in part or in full as described therein.

20. **DELIVERY:** All time limits stated in the contract documents are of the essence. The contractor shall expedite the work and achieve substantial completion within the contract time. If time limits are not specified, state the number of days required to make delivery/completion in the space provided. Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the contractor, not withstanding that such materials/workmanship have been previously been overlooked and accepted.

21. **CHANGES IN QUANTITIES/ITEMS:** The City reserves the right to add or delete any item(s) from the bid in whole or in part at the City's discretion as given in the Bid or Proposal wherever it deems it advisable or necessary so to do and such changes shall in no way vitiate the contract nor affect the bid prices for any item or remaining work. Unit prices submitted in the bid shall not be increased or decreased regardless of changes in quantity.

The City may waive minor differences in specifications in bids provided these differences do not violate the specifications' intent nor materially affect the operation for which the items or services are being purchased. The Contractor will be paid for the actual amount of authorized work done or material furnished under any item of the bid at the price bid and stipulated for such item. In case any quantity is increased, the Contractor shall not be entitled to any increased compensation over and above the unit price bid for such item, or any claim for damages on account of loss of anticipated profits should any quantities be decreased.

The contractor shall be responsible for confirming the accuracy of the specified quantities prior to ordering materials or supplies and the City's payment shall be based on the actual quantities incorporated in the work and not the quantities specified in the bid document. The quantities must not exceed the Contract specified quantities without specific written authorization of the Contract Manager and it is the Contractor's responsibility to obtain said authorization.

22. **MATERIALS:** All materials shall be new and free from defects. They shall be standard products of current manufacture. Unless otherwise noted in the contract documents, the contractor shall abide by specific manufacturer instructions and recommendations on installation and operation.
23. **BRAND NAME OR EQUAL:** Identification of an item by manufacturer's name, trade or brand name, or catalog number is for information and establishment of a quality level desired and is not intended to restrict competition. Bidders may offer any brand which meets or exceeds the specification, unless brand name only is specified. Bids on other makes and/or models will be considered provided the bidder clearly states on the proposal what is being proposed and forwards with the bid complete descriptive literature indicating how the characteristics of the article being offered will meet the specifications. The City reserves the right to accept or reject items offered as an equal.
24. **DEFECTIVE MATERIALS/WORKMANSHIP:** Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the contractor. If the work shall be found to be defective or to have been damaged before final acceptance, the contractor shall make good such defect in a manner satisfactory to the City, without extra compensation even though said defect or injury may have not been due to any act or negligence of the contractor.
25. **TIME OF BEGINNING AND COMPLETION:** The Contractor shall begin work on the Contract within seven (7) days after the mailing of a purchase order and shall diligently prosecute the same, so that it shall be fully completed within the time as stated in the contract.
26. **FAILURE TO COMPLETE WORK ON TIME / LIQUIDATED DAMAGES:** The Contractor accepts this contract with the understanding and intention to perform fully and in an acceptable manner within the time stated. Should he fail to complete fully, to all intent and purpose, the work specified in the time specified, or within the time as it may have been extended by the City, the Contractor shall pay, for each calendar day that any work shall remain uncompleted, not including Sundays, the sum of \$400 per day. This sum is hereby agreed upon, not as a penalty, but as liquidated damages and the City shall have the right to deduct the amount of such damages from any moneys due the Contractor under this Contract.
27. **CONTRACT DELAYS/EXTENSION OF TIME:** The Contractor shall pursue the contract so as to complete all work within the time allotted under these specifications. The completion date as set in the Special Provisions allows for inclement weather, holidays and coordination with other companies.

If the contractor is delayed in the delivery of the supplies, equipment or services by any act of neglect of the City or by a separate contractor employed by the City, or by any changes, strikes, lockouts, fires, unusual delays in transportation or delay authorized by the City, the City shall review the cause of such delay and shall make an extension of time if warranted.

All claims for extensions must be a written notice sent to the Contract Manager within ten (10) calendar days after the date when such alleged cause for extension of time occurred. All such claims shall state specifically the amount of time of the delay the contractor believes to have suffered. If statement is not received within the prescribed time the claim shall be forfeited and invalidated.

28. **CONTRACT DELAYS - NO DAMAGE CLAIMS ACCEPTED:**

The Contractor shall make no claim for extra monetary compensation for delays, whether ordered by the City or not, caused by delays in funding, governmental approvals, private or public companies' actions, inclement or cold weather, site conditions, or from any cause whatsoever. The Contractor shall adjust its operation to continue the work at other locations under the contract, if available, and as directed by the City. If it is necessary to discontinue the work temporarily, the Contractor shall resume work within 48 hours of notice from the City. The City may adjust the completion date to compensate for the lost day(s) on a day-for-day basis, if the City finds that the contractor could not make up for such lost day(s) by reallocating its forces or rescheduling the work, up to the time remaining on the original schedule at the time of shutdown.

29. **PROGRESS SCHEDULE AND SCHEDULE OF OPERATIONS:**

The construction of this project will be planned and recorded with an Activities Chart Project Schedule (AC) and Written Narrative (WN) unless specifically determined to be unnecessary by the Contract Manager. The AC Project Schedule and Written Narrative will break down, in detail, the time (working days or completion date) involved in performing major construction activities for the duration of the project. The AC Project Schedule shall be used for the coordination and monitoring of major work under the contract including the activities of subcontractors, vendors and suppliers. The AC Project Schedule shall be prepared in accordance with the requirements of the Maryland State Highway Administration Standard Specifications for Construction and Materials dated January 1982, and the errata and addend thereto, subsequent supplement(s) and the Special Provisions as set forth in this Invitation for Bids, unless otherwise directed or approved by the Contract Manager. The schedule shall be consistent with the contract specified completion date(s) and/or working days.

The Contractor is responsible for preparing the initial AC Project Schedule and Written Narrative.

**Preparation of Initial Schedule** - Within 10 calendar days after notification that the Contractor is the apparent successful bidder, the Contractor will complete development of a initial AC Project Schedule and Written Narrative (describing the logical time representations as proposed in the AC Project Schedule), and submit 2 (two) copies of each AC and WN to the Contract Manager for review and approval.

**Updating Project Schedule:** At any time that it becomes apparent the schedule, created as above and approved by the Contract Manager, is not being implemented, either because the work or service is ahead or behind schedule, the Contractor shall immediately notify the Contract Manager and shall submit a revised, written, updated AC and WN for the Contract Managers review, revision and approval. The contractor shall make every effort to meet the original completion date and/or working days allowed unless otherwise so directed by the Contract Manager.

**Payment for Schedule AC/WN:** No special compensation will be paid for preparing or revising the above project AC/WN as the cost shall be considered incidental to the contract with compensation incorporated into the bid items(s).

30. **LEGAL REQUIREMENTS:** All materials, equipment, supplies and services shall conform to applicable Federal and State laws and regulations. The contractor shall observe and comply with all Federal, State, County and local laws and ordinances that affect the work to be done. The provisions of this contract shall be governed by the laws of the State of Maryland.

31. **SPECIFICATIONS:** The Construction Specifications for this contract will be those shown below and additions included in the Special Provisions, if applicable. In the event of conflict, the City determination shall govern. The following specifications and standards, listed below, including all subsequent addenda, amendments and errata are made part of this contract to the extent required by the references thereto:

1. Maryland Department of Transportation, State Highway Administration, "Standard Specifications for Construction and Materials" (Maryland Department of Transportation, State Highway Administration), dated October 1993 and all errata and addenda thereto. MDSHA Book of Standards for Highway and Incidental Structures.
2. Montgomery County Department of Transportation, "Montgomery County Road Construction Code and Standard Specifications,"
3. General Conditions and Standard Specifications approved July 1986, and Standard Details approved February 1986 of the Washington Suburban Sanitary Commission.

4. Montgomery County Department of Transportation, "Design Standards." August 1991.

5. 1994 Maryland "Standards and Specifications Soil Erosion and Sediment Control" published jointly by Water Resources Administration, Soil Conservation Service and State Soil Conservation Committee.

6. The U. S. Department of Transportation, Federal Highway Administration, "Manual on Uniform Traffic Control Devices for Streets and Highway."

32. **CONTRACT DOCUMENTS:** The contract documents are complementary and what is required by any one shall be binding as if required by all. Words and abbreviations that have well known technical or trade meanings are used in the contract documents in accordance with such recognized meanings. Any discrepancies which may be discovered between actual conditions and those represented by the contract documents shall be reported to the City and work shall not proceed until written instruction has been received by the contractor from the City. On drawings, the figured dimensions shall govern in the case of discrepancy between the scales and figures. Anything shown on the construction plans and not mentioned in the specifications or mentioned in the specifications and not shown on the plans shall have the same effect as if shown or mentioned respectively in both.

33. **INTERPRETATION:** Any questions concerning terms, conditions and definitions of the contract and bidding regulations shall be directed in writing to the Contracts Officer. Any questions concerning the technical specifications and drawings shall be directed in writing to the Contract Manager. The submission of a bid shall be prima facie evidence that the bidder thoroughly understands the terms of the contract documents. The contractor shall take no advantage of any error or omission in these contract documents.

34. **PRE-CONSTRUCTION CONFERENCE:** A pre-construction conference which must be attended by the contractor will be held following Contract award. No compensation will be made by the City to the Contractor for meetings.

35. **EMERGENCY CONTACT:** The Contractor shall provide at least two local telephone numbers which may be used for contacting an official of the Contractor at all times, 24 hours per day, seven days per week: at which numbers person(s) of responsibility will be available to respond to City directives relative to the contract. The Contractor shall have available sufficient personnel and equipment to immediately respond to emergency needs, as determined by the City. There will be no special compensation paid for this requirement but the cost is to be considered incidental to the other contract pay items.

36. **SUPERVISION AND DIRECTION OF WORK:** The work shall be under the general supervision of the Contract Manager. While it is intended that the Contractor shall be allowed in general to carry on the contract in accordance with such



general plan as may appear to the Contractor most desirable, the Contract Manager, at the Contract Manager's discretion, may from time to time, direct the order in which, and points at which, the work shall be prosecuted and may exercise such general control over the conduct of the work at a time or place, as shall be required, in the Contract Manager's opinion, to safeguard the interests of the City, and the Contractor shall have no claims for damages or extra compensation on account of the fact that it shall have been necessary to carry on the work in different sequence from that which the Contractor may have contemplated. The Contractor shall immediately comply with any and all orders and instructions given by the Contract Manager, but nothing herein contained shall be considered such an assumption of control over the work by the City or the Contract Manager as to relieve the Contractor of any obligations or liabilities under the contract

37. **INSPECTION:** Work and materials will be inspected promptly to see that the same strictly correspond with the drawings and specifications, but if, for any reason, delay should occur in connection with such inspection, the Contractor shall have thereby no claim for damages or extra compensation. Materials and workmanship shall be always subject to the approval of the Contract Manager, but no inspection, approval or acceptance of any part of the work or of the materials used therein, nor any payment on account thereof shall prevent the rejection of said materials or work at any time thereafter, should said work or materials be found to be defective or not in accordance with the requirements of the contract.

Any costs for any "re-inspection" of the job shall be the responsibility of the contractor.

38. **TERMINATION FOR DEFAULT**The contract may be cancelled or annulled by the City in whole or in part by written notice of default to the Contractor upon nonperformance or violation of contract terms and an award made to next low Bidder, or, articles specified may be purchased on the open market similar to those so terminated. In either event, the defaulting Contractor (or his surety) shall be liable to the City for costs to the City in excess of the defaulted contract prices: Provided, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

39. **TERMINATION FOR CONVENIENCE:**The performance of work or services under this contract may be terminated in whole or in part, upon ten (10) calendar days written notice when the City determines that such termination is in its best interest. The City shall be liable for only such goods and services delivered and accepted or approved by the City prior to the effective date of such termination.

40. **EMPLOYEES:** The Contractor shall employ only competent, skillful persons to do the work, and whenever the Contract Manager shall notify the Contractor in writing that any person

employed on the work is, in his opinion, incompetent, disobedient, disorderly, discourteous or otherwise unsatisfactory, such person shall be discharged from the work and shall not again be employed for this contract except with the consent of the Contract Manager.

41. **NON-WORK DAY:** The City observes the following holidays: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Thanksgiving Friday and Christmas Day, all days of general and congressional elections throughout the State, and a five-day work week.

The Contractor will not be permitted to do any work which requires the services of the City's inspection, supervisory or line and grade forces on the days on which the above mentioned holidays are observed by the City or on Saturdays or Sundays, unless otherwise authorized by the Contract Manager in writing. However, the Contractor, with verbal permission of the Contract Manager, may be permitted to perform clean-up and such other items for which no specific payment is involved on Saturdays and holidays.

The normal number of working hours per day on this Contract will be limited to eight, unless otherwise authorized by the Contract Manager in writing.

In case of an emergency, which may require the services of the City on Saturdays, Sundays, holidays or longer than eight hours per day, the Contractor shall request permission of the Contract Manager to work. If, in the opinion of the Contract Manager the emergency is bona fide, he will grant permission to the Contractor to work such hours as may be necessary. Also, if in the opinion of the Contract Manager, a bona fide emergency exists, the Contract Manager may direct the Contractor to work such hours as may be necessary whether the Contractor requests permission to do so or not.

42. **LANGUAGE:** The contractor shall appoint one or more crew members or supervisors to act as liaison with the City and emergency services personnel. All liaisons shall be fluently bilingual in English and the contractor's employees' language(s), and at least one liaison shall be present at each work site at all times when any of the contractor's employees or agents are at the site.
43. **EQUAL EMPLOYMENT OPPORTUNITY:** The contractor will not discriminate against any employee or applicant because of race, creed, sex, national origin or disability. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, national origin or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment, layoff or termination; rates of pay or other form of compensation; and selection for training,

including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

If the contractor fails to comply with nondiscrimination clauses of this contract or fails to include such contract provisions in all subcontracts, this contract may be declared void AB INITIO, cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further contracts with the City of Rockville. Any employee, applicant for employment, or prospective employee with information concerning any breach of these requirements may communicate such information to the City Manager who shall commence a prompt investigation of the alleged violation. Pursuant to such investigation, the contractor will permit access to the contractors books, records, and accounts. If the City Manager concludes that the contractor has failed to comply with nondiscrimination clauses, the remedies set out above may be invoked.

44. **DRAWINGS TO BE FOLLOWED:** The approved drawings, profiles and cross sections on file with the City will show the location, details and dimensions of the work contemplated, which shall be performed in strict accordance therewith and in accordance with the specifications. Any deviations from the drawings or specifications as may be required by the exigencies of construction in all cases will be determined by the Contract Manager. There shall be no such deviations without the written authorization of the Contract Manager. On all drawings, etc., the figured dimensions shall govern in the case of discrepancy between the scales and figures. The Contractor shall take no advantage of any error or omission in the drawings or specifications. The Contract Manager shall make such corrections and interpretations as may be deemed necessary for the fulfillment of the intent of the specifications and of the drawings as construed by the Contract Manager whose decision shall be final.

45. **CERTIFICATION:** Under no circumstances will Contractors be paid for materials utilized on any City contract unless certified to by an authorized City of Rockville Inspector. The Contractor must not incorporate any materials into a City project without prior authorization and certification of the City Inspector, unless necessary to eliminate or avoid hazardous conditions. Under these emergency circumstances the responsibility for inspector notification and quantity/quality confirmation rests with the Contractor and must be obtained within 24 hours of the work.

46. **DECISIONS AND EXPLANATIONS BY CONTRACT MANAGER:** The Contract Manager shall make all necessary explanations as to the meaning and intent of the specifications and drawings, and shall give all orders and directions, either contemplated therein or thereby, or in every case in which a difficult or unforeseen condition arises during

the prosecution of the work. Should there be any discrepancies or should any misunderstanding arise as to the intent of anything contained in the drawings and specifications, the decision of the Contract Manager shall be final and binding. The Contract Manager shall in all cases determine the amount, quality, acceptability and estimates of the work to be paid for under the Contract, and shall decide all questions in relation to the work. In case any questions arise between parties relating to the Contract, such decision and estimate shall be a condition precedent to the right of the Contractor to receive payment under that part of the Contract which is in dispute.

47. **WORK TO BE DONE AND MATERIALS TO BE**

**FURNISHED:** The Contractor shall do all the work and furnish all the labor, materials, tools, and equipment necessary or proper for performing the work required by the Contract, in the manner called for by the drawings and specifications and within the Contract time. The Contractor shall complete the entire work together with such extra work as may be required, at the prices fixed therefor, to the satisfaction of the Contract Manager and in accordance with the specifications and drawings.

48. **NOTIFICATION TO OTHER AGENCIES:** The contractor will be responsible for notifying all concerned agencies affected by the work a minimum of 48 hours in advance of any activity, as prescribed by said agencies, including, but not limited to: the Washington Gas Light Company, PEPCO, Verizon Telephone Company, City of Rockville Utilities Section at (240) 314-8567, Montgomery County Government, State Highway Administration and the Washington Suburban Sanitary Commission. The Contractor must notify MISS UTILITY at 1-800-257-7777 a minimum of 72 hours and no more than 5 working days prior to removal of any pavement or beginning any excavation. There shall be no measurement or direct payment to the Contractor for such notification, working around, the protection of, or repair of damage to such existing utilities caused by the proposed construction activities directly or indirectly.

49. **PERMITS AND REGULATIONS:** Unless stipulated elsewhere in these specifications, the contractor shall be responsible for obtaining and paying for all applicable permits. Where signatures of the City are required in connection with the obtaining of such permits, certificates, etc., the contractor shall prepare the proper paperwork and present it to the City for signature. City of Rockville Permit fees shall be waived. If the contractor ascertains at any time that any requirement of this contract is at variance with applicable laws, ordinances, regulations and/or building codes, notification to the Project Manager shall be made immediately and any necessary adjustment to the contract shall be made. Without proper notice to the Project Manager, the contractor shall bear all costs arising from the performance of work the contractor knows to be contrary to such laws, ordinances, etc.

50. **EXCAVATION:** Unless specifically provided in the specifications all trench and roadway excavation is hereby unclassified as to the character of materials. That is, the lump sum price bid for excavation shall constitute full payment for removal and disposal of all materials, regardless of type, encountered in trenching and roadway excavation, within the limits of this Contract, as necessary and as shown to be removed on the Contract drawings and/or as directed by the Contract Manager, except as otherwise provided for under this Contract.

All bidders are hereby directed to familiarize themselves with all site conditions including subsurface and the proximity of adjacent features.

51. **SERVICE OF NOTICES:** The mailing in a United States Post Office box of a written communication, notice or order, addressed to the Contractor at the business address filed with the City, or to his office at the site of the work shall be considered as sufficient service upon the Contractor of such communication, notice or order; and the date of said service shall be the date of such mailing. Written notice shall also be deemed to have been duly served if delivered in person to the individual or member of the firm or to any officer of the corporation for whom it was intended if delivered or sent by registered or certified mail to the last known address.

52. **PATENT RIGHTS:** Whenever any article, materials, equipment, process, composition, means, or things called for by these specifications is covered by Letters Patent, the successful bidder must secure, before using or employing such article, material etc., the assent in writing of the Owner or Licensee of such Letters Patent and file the same with the City.

The said assent is to cover not only the use, employment, and incorporation of said article, material, equipment, process, composition, combination, means, or thing in the construction and completion of the work but also the permanent use of said article, material, etc., thereafter by or on behalf of the City, in the operation and maintenance of the project for the purposes for which it is intended or adapted. The Contractor shall be responsible for any claims made against the City, its agents and employees or any actual or alleged infringement of patents by the use of any such patented articles, etc., in the construction and completion of the work, and shall save harmless and indemnify the City, its agents and employees from all costs, expenses, and damages, including Solicitor's and Attorney's fees which the City may be obligated to pay by reason of any actual or alleged infringement of patents used in the construction and completion of the work herein specified.

53. **CARE AND PROTECTION OF WORK:** From the commencement of the Contract until its completion, the

Contractor shall be solely responsible for the care of the work and all injury or damage to the same, from whatever cause, shall be made good by the Contractor at the Contractor's own expense, before the final estimate is made. The Contractor shall provide suitable means of protection for all materials intended to be used in the work and for work in progress, as well as completed work.

54. **ABANDONMENT OF OR DELAY IN WORK:** If the work under the Contract shall be abandoned by the Contractor, or if at any time the Contract Manager shall be of the opinion and shall so certify, in writing, to the City, that the performance of the Contract is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of the Contract or is executing the same in bad faith or if the work is not fully completed within the time specified for its completion, together with such extension of time as may have been granted, the City by written notice, may order the Contractor to discontinue all work thereunder, or any part thereof, within the number of days specified on such notice. At the expiration of said time the Contractor shall discontinue the work, or such part thereof, and the City shall have the power, by Contract, or otherwise, to complete said work and deduct the entire cost thereof from any monies due or to become due the Contractor under the Contract. For such completion of work the City may, for itself or its contractors take possession of and use or cause to be used any or all materials, tools, and equipment found on the site of said work. When any part of the Contract is being carried on by the City, as herein provided, the Contractor shall continue the remainder of the work in conformity with the terms of the Contract and in such manner as not to interfere with the City's workmen.

55. **SUBLETTING OR ASSIGNING OF CONTRACT:** The City and the contractor each bind themselves, their partners, successors, assigns and legal representatives of such other parties in respect to all covenants, agreements, and obligations contained in the contract documents. Neither party to the contract shall sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of the work provided for therein, or of his right, title or interest therein to any person, firm or corporation without the written consent of the other party, nor shall the contractor assign any monies due or to become due hereunder without the previous written consent of the City.

56. **NO WAIVER OF CONTRACT:** Neither the acceptance by the City or its Contract Manager nor any order, measurement, certificate or payment of money, of the whole or any part of the work, nor any extension of time nor possession taken by the City or its Contract Manager shall operate as a waiver of any portion of the Contract, or any right to damage therein provided. The failure of the City to strictly enforce any provision of this contract shall not be a waiver of any subsequent breach of the same or different nature.

57. **DUTIES, OBLIGATIONS, RIGHTS AND REMEDIES:** The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of the duties, obligations, rights and remedies otherwise imposed or available by law, unless so indicated.

58. **IMPLIED WORK:** All incidental work required by the drawings or specifications for which no payment is specifically provided and any work or materials not therein specified which are required to complete the work and which may fairly be implied as included in the Contract, and which the Contract Manager shall judge to be so included, shall be done or furnished by the Contractor without extra compensation.

The intent is to prescribe a complete work or improvement which the contractor undertakes to do in full compliance with the contract documents together with any authorized alterations, special provisions and supplemental agreements.

59. **MEASUREMENT OF WORK AND MATERIAL:** All quantities of work and material to be paid for will be measured and determined by the City Inspector according to the specifications and drawings, and the working lines that may be given. No allowance will be made for any excess above the quantities required by the specifications, drawings and lines on any part of the work, except where such excess material has been supplied or work done by order of the City Inspector and in the absence of default or negligence on the part of the Contractor. Should the dimensions of any part of the work or of the materials be less than those required by the drawings or the directions of the City Inspector, only the actual quantities placed will be allowed in measurement.

60. **EXTRA COSTS:** If the contractor claims that any instructions by the contract documents or otherwise involve extra compensation or extension of time, a written protest must be submitted to the Contract Manager within ten (10) calendar days after receipt of such instructions and before proceeding to execute the work, stating in detail the basis for objection. No such claim will be considered unless so made.

61. **CONTINGENT ITEMS & QUANTITIES:** Items and quantities identified as being contingent are provided in the Contract for use when and as directed by the Contract Manager. The quantities for these items shown on the Plans or in the specifications are established for the purpose of obtaining a bid price. The quantities for these contingent items may be increased or decreased without any adjustment to the Contract unit price bid or the contingent items may be deleted entirely from the Contract by the Contract Manager without negotiation. The Contractor shall submit no claim against the City for any adjustment to the Contract unit price bid, should the contingent items be increased, decreased or eliminated entirely.

Payment for any contingent items used will be made on the basis of the quantities as actually measured and as specified in the Specifications. Materials, Construction Requirements and Basis of Payment shall be as specified elsewhere in the Specifications, Plans or Special Provisions.

62. **CHANGES IN THE SCOPE OR EXTRA WORK:** The City, without invalidating the contract may issue written changes in the work consisting of additions, deletions or modifications with the contract sum and completion date being adjusted accordingly. All such changes, or additional work must be authorized in writing by the Contract Officer prior to starting such work. Costs shall be limited to the cost of materials, labor, field supervision and field office personnel directly involved in and attributed to the change. All costs and/or credits to the City for a change in the work shall be determined by the unit price bid or by mutual agreement.

The contractor shall do all work that may be required to complete the work contemplated at the unit prices bid or at a lump sum price to be mutually agreed upon.

The Contractor shall perform extra work, for which there is no quantity or price included in the Contract, whenever it is deemed necessary or desirable, to complete fully the work as contemplated, and such work shall be done in accordance with the specifications therefor, or in the best workmanlike manner as directed. Where such a price or sum cannot be agreed upon by both parties, or where this method of payment is impracticable, the Contract Manager may order the Contractor to do such work on a force account basis, which will be paid for as follows.

63. **FORCE ACCOUNT WORK:** When the Contractor is required to perform work as a result of additions or changes to the contract for which there are no applicable unit prices in the contract, the City and Contractor shall make every effort to come to an agreed upon price for the performance of such work. If an agreement cannot be reached, the City may require the Contractor to do such work on a force account basis to be compensated in accordance with the following:

**A. Labor.** For all labor and for foremen in direct charge of the specific operations the Contractor shall receive the actual wages for each and every hour that said labor and foremen are actually engaged in such work.

**B. Materials.** For materials accepted by the Contract Manager and incorporated into the project, the Contractor shall receive the actual cost of such materials, including transportation charges paid by him (exclusive of machinery rentals as hereinafter set forth). Excess materials delivered to the job site and not incorporated into the project will not be paid

for and it is the Contractor's responsibility to remove said excess material from the job site.

- C. Equipment.** For any machinery or special equipment (other than small equipment tools, whether rented or owned), the use of which has been authorized in writing, by the Contract Manager the Contractor shall receive the rates agreed upon in writing before such work is begun which price shall include fuel, oil and miscellaneous necessities, or the Contractor shall receive those rates which may be specified elsewhere in the Special Provisions. For the purpose of definition, equipment with a new cost of \$1000 or less will be considered small tools and equipment.
- D. Materials and Supplies Not Incorporated in the Work.** For materials and supplies expended in the performance of the work (excluding those required for rented equipment) such as temporary pavement, stone, etc., and approved by the Contract Manager, the Contractor shall receive the actual cost of such materials and supplies used. The Contractor shall receive a reasonable allowance as determined by the Contract Manager for materials used but not expended in the performance of the work.
- E. Subcontractors.** The Contractor shall receive the actual cost of work performed by a subcontractor. Subcontractor's cost is to be determined as in A., B., C., and D. above, plus the fixed fee for overhead and profit allowance computed as in G.
- F. Superintendence.** No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.
- G. Contractor's Fixed Fee.** The procurement officer and the Contractor shall negotiate a fixed fee for force account work performed pursuant to this specification by his force and by his subcontractors. The City shall pay 10 percent of A as compensation for overhead and profit for the work performed. The Contractor shall proceed diligently with the performance of the force account work to completion. The Contractor's fixed fee shall include an amount equal to the sum of 65 percent of A, which shall include, but not be limited to the following:
- ( 1 ) Compensation for all costs paid to, or in behalf of, workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits that may be required by collective bargaining

agreement or other employment contract generally applicable to the classes of labor employed in the work; and  
( 2 ) Bond premiums, property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions and Social Security taxes on the force account work.

In addition, the Contractor's fixed fee may include an amount not to exceed 10 percent of B, unless specifically authorized by the engineer in advance of the work; 5 percent of D, and 5 percent of E, with the exception of that portion chargeable to equipment as defined above.

**H. Compensation.** The compensation as set forth above shall be received by the Contractor as payment in full for change order work done on a force account basis. At the end of each day, the Contractor's representatives and the inspector, shall compare records of the cost of work as ordered on a force account basis. Differences shall be immediately resolved and any unresolved difference shall be brought to the attention of the Contract Manager by written notice from the Contractor within two working days of the occurrence.

**I. Statements.** No payment will be made for work performed on a force account basis until the Contractor furnishes the Contract Manager duplicate itemized statements of the cost of such force account work detailed as to the following:

- (1) Name, classification, date, daily hours, total hours, rate, and extension for such laborer, or foreman.
- (2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (3) Quantities of materials, prices and extensions.
- (4) Transportation of materials: and
- (5) Payments of items under I, ( 1 ) shall be accomplished by copies of certified payrolls. Under 1, (2) original receipted invoices for rentals must be provided if requested by the Contract Manager. I, ( 3 ) and I ( 4 ), shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the original invoices the statements shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from his stock that the quantity claimed was actually used and that the price and transportation of the material

as claimed represent actual cost. Any request for payment under this Section should be submitted in the order outlined by the above.

The Contractor shall be responsible for all damages resulting from work done on a force-account basis, the same as if this work had been included in the original Contract.

Work performed without previous written order by the Contract Manager will not be paid for.

64. **PROGRESS PAYMENTS:** The contractor shall submit a detailed application for payment on a monthly basis. Such application for payment, notarized, if required, must be accompanied by supporting data and documents substantiating the contractors right to payment and reflecting a ten percent (10%) retainage.

Applications for payment shall not include payment for equipment or materials delivered to the site but not installed or for materials or equipment properly stored off-site unless specifically approved by the City Project Manager. If such approval is granted, the contractor must submit with the application for payment, bills of sale or other such documentation satisfactory to the City to establish the City's title to such materials or equipment or otherwise to protect the City's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site. Such approvals are typically reserved for "big ticket" items that individually would exceed five percent (5%) of the bid total.

The Contractor shall promptly pay each subcontractor and supplier for work completed upon receipt of payment from the City, the amount to which said subcontractor is entitled, reflecting any percentage retained from payments to the contractor on account of each subcontractors work. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make prompt payments to his subcontractors in a similar manner.

The City shall be under no obligation to pay or to see to the payment of any moneys to any subcontractor except as may otherwise be required by law.

No Certificate of Payment nor partial or entire use of the facility by the City shall constitute an acceptance of any work which is not in accordance with the Contract Documents.

**Payments Withheld** – The City may decline to certify payment or because of subsequently discovered evidence or observations, nullify the whole or any part of any Certification

of Payment previously issued, as may be necessary to protect the City from loss because of: (1) defective work not remedied, (2) third party claim filed or evidence indicating probable filing of such claim, (3) failure of the Contractor to make payments properly to subcontractors or suppliers, (4) reasonable evidence that the work can not be completed for the unpaid balance of the contract sum, (5) reasonable evidence that the work will not be completed within the Contract time, (7) persistent failure to carry out the work.

65. **FINAL PAYMENT REQUEST:** Upon reaching substantial completion, as defined by receipt of occupancy permit, the contractor may submit a written Application for Final Payment. All supporting documentation and data shall be submitted with the Request for final Payment as is applicable to the monthly Requests for Payment referenced heretofore.

Out of the amount representing the total of the final payment request the City shall deduct five (5%) percent, which shall be in addition to any and all other amounts which, under the Contract, it is entitled or required to retain and shall hold said sum for a period of twelve (12) months from and after the date of acceptance of the work by the City.

Within thirty (30) days after the approval of the final payment request, the City will pay to the Contractor the amount remaining after deducting from the total amount of the final estimate all such sums as have hereto before been paid to the Contractor under the provision of the Contract and also such amounts as the City has or may be authorized under the Contract to reserve or retain.

Neither the final payment nor the remaining retainage shall become due until the Contractor submits to the Project Manager:

1. An affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the work for which the City or his property might in any way be responsible, have been paid.
2. Consent of surety to final payment, and
3. If requested, data establishing payment or satisfaction of obligations, such as receipt, release and waivers of liens arising out of the Contract.;
4. All punch list items are completed to the satisfaction of the Project Manager.

If any subcontractor refuses to furnish a release or waiver of liens required by the City, the Contractor may furnish a bond satisfactory to the City to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the City all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney fees.

Acceptance by the contractor of final payment shall operate as a release to the Mayor and Council and every officer and

agent thereof, from all claims and liabilities to the contractor for anything done or furnished or relating to the work under the contract.

66. **GUARANTEES / WARRANTIES:** All guarantees and warranties required shall be furnished by the contractor and shall be delivered to the City Inspector before final payment is made.

The contractor guarantees that the items conform to the contract documents. The contractor further guarantees intended purpose or use as far as the contractor knows or has reason to know.

67. **GUARANTEE PERIOD:** The Contractor shall keep in good order and repair for a period of twelve (12) months from the date of final acceptance of the work, all work done and materials/equipment supplied under this contract. If, in the judgment of the Contract Manager, repairs or renewals become necessary, said repair or renewal shall be promptly made by the Contractor, any inferior or defective work replaced by good and acceptable materials, and all necessary work done to put the work in first class condition. If the Contractor does not, within ten (10) days after notification from the Contract Manager, signify his intention in writing or in action to do such necessary work, as described above then the Contract Manager may proceed with the work and charge the cost thereof to the account of the Contract as herein before provided.
68. **RELEASE OF RETAINAGE:** Upon the expiration of the aforesaid period of TWELVE (12) months succeeding the date of acceptance, the City will pay to the Contractor all sums reserved or retained, less such amount as it may be empowered under the provisions of the Contract to retain.
69. **TRANSFER OF TITLE:** The Contractor warrants that title to all work, materials and equipment covered by the Application for Payment will pass to the City either by incorporation in construction or upon the receipt of payment by the Contractor, free and clear of all liens, claims, interests or encumbrances, and that no work, materials, or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any person performing the work at the site or furnishing materials or equipment for the project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other persons.
70. **USE OF PREMISES:** Whenever, in the opinion of the Project Manager, any portion of the work is completed or is in an acceptable condition for use, it shall be used for the purpose it was intended, however, such use shall not be held as acceptance of that portion of the work, or as a waiver of any of the provisions of the Contract.

71. **AUTHORITY OF THE CITY MANAGER IN DISPUTES:**

Except as may otherwise be provided by the final agreement, any dispute concerning a question of fact arising under the agreement signed by the City and the contractor which is not disposed of by the final agreement shall be decided by the City Manager who shall notify the contractor in writing of his determination. The contractor shall be afforded the opportunity to be heard and offer evidence in support of the claim. Pending final decision of the dispute herein, the contractor shall proceed diligently with performance under the agreement signed by the City and the contractor. The decision of the City Manager shall be final and conclusive unless an appeal is taken pursuant to the City Purchasing Ordinance.

72. **DETERMINATION OF CITY'S LIABILITY:** The acceptance by the Contractor of the final payment made as aforesaid, shall operate as and be a release to the City and every officer and agent thereof, from all claims by and liabilities to the Contractor for anything done or furnished for or relating to or affecting the work under the contract.

73. **NO LIMITATION OF LIABILITY:** The mention of any specific duty or liability of the contractor in any part of the specification shall not be construed as a limitation or restriction upon any general liability or duty imposed upon the contractor.

74. **INDEMNIFICATION OF THE COUNCIL:** The contractor shall indemnify and save harmless the Mayor and Council from all suits, actions and damages or costs, of every name and description to which the Council may be subjected or put by reason of injury to persons or property as a result of the work, whether caused by negligence or carelessness on the part of the contractor, or subcontractors or agents thereof.

75. **PRESERVATION OF MONUMENTS AND TREES:** The contractor shall be responsible for the preservation of all public and private property, trees, monuments, highway signs, markers, fences, and curbs or other appurtenances, and shall use every precaution to prevent damage or injury thereto. Any expense necessary to provide adequate protection, whether such designated item be on or off the right-of-way, shall be assumed by the contractor.

76. **PUBLIC ACCESS:** The Contractor shall at all times conduct the work in such a manner as to insure the least obstruction to traffic practicable. The convenience and safety of the general public and the residents along the improvement shall be provided for in an adequate and satisfactory manner. Fire hydrants shall be kept accessible to fire apparatus at all times. Handicap access shall remain accessible.

77. **HAZARDOUS AND TOXIC SUBSTANCES:** Manufacturers and distributors are required by federal "Hazard Communication" provision (29 CFR 1910.1200 ), and the Maryland "Access to Information About Hazardous and Toxic

Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the City with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of services or contemporaneous with the delivery of goods.

**78. MAINTENANCE OF VEHICULAR TRAFFIC (if applicable):**

Unless otherwise directed by the Contract Manager, traffic must be maintained on all roadways within the construction area continuously or with the least amount of interruption during the construction period necessary to minimize accidents and accident severity and maintain safety while at the same time minimizing inconvenience to the traveling public and the Contractor. The Contract Manager shall have the exclusive right to order a road to be closed or to remain open. No equipment will be stored or permitted to stand within the limits of the roadway right-of-way where traffic must be maintained. Any earth dropped on the surface of the existing road shall be removed immediately to avoid possible hazardous conditions. The contractor shall prepare and submit a Traffic Control Plan (TCP) for the Contract Manager's review, revision, and approval, at least ten days before beginning work, unless otherwise directed.

All Traffic Control Devices shall be in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), latest edition (and all revisions). With the approved TCP implemented, the Contractor will be permitted to work with the following provisions: All traffic lanes must be restored at the end of each day unless specifically authorized otherwise, in advance, by the Contract Manager:

The City reserves the right to modify or expand on the methods of traffic control specified and to restrict working hours if, in the opinion of the Contract Manager, the Contractor's operations are a detriment to traffic during rush hour periods.

Signs on fixed supports shall be mounted on two posts. Signs mounted on portable supports are suitable for temporary conditions. During periods of partial shutdown, or extended periods when no work is being performed, the Contractor shall remove or adequately cover all construction signs as directed by the Contract Manager.

The Contractor shall be responsible for removing, storing, covering, and resetting all existing traffic signs and delineators that become inapplicable and will confuse traffic during the various stages of construction, the cost of which shall be included in the price for Maintenance of Traffic or in the absence of such a pay item it shall be accomplished at no additional compensation, as incidental to the contract. Any signs lost or damaged will be replaced by the Contractor at its expense;

The Contractor shall provide, maintain in new condition, and move when necessary or directed all traffic control devices used for the guidance and protection of vehicles.

The Contractor shall be responsible for providing the appropriate signs to reflect varying traffic patterns prior to the commencement of a new stage of construction.

Traffic must be safely maintained at all times throughout the entire length of the project. No additional compensation shall be paid to the contractor for traffic maintenance, even if the contract time exceeds the contractually specified completion date or working days.

When required lane shifts are implemented, existing painted lane markings no longer applicable shall be removed to the satisfaction of the Contract Manager.

Temporary crash cushions are to be installed as shown on the Plans. Unless otherwise specified, sand containers shall be used. The crash cushions shall conform to Subsection 104.10 of the MDSHA Specifications.

Crash cushions shall be reset to reflect changing traffic patterns caused by different stages of Traffic Control. The crash cushions shall be reset at locations shown on the Plans or as directed by the Inspector.

Should any of the sand container components be damaged during the resetting of the system or during the course of the project, the Contractor shall replace the damaged components at its own expense.

The Contractor shall have flaggers on this Project for the purpose of controlling traffic while maneuvering heavy equipment. This may require a temporary lane closure in any of the specified Traffic Control Phases. These temporary lane shut-downs shall be kept to a minimum and the normal traffic pattern for the Traffic Phase shall be restored as quickly as possible. The Contractor shall comply with Section B-20 of the MUTCD regarding flagger signing.

Prior to stopping work each day the Contractor will be required to reshape all graded areas and eliminate all drop-offs not protected by barriers by filling with compacted stone at maximum of 8: 1 slope.

All barriers and barricades shall be adequately illuminated at night, as specified herein, and all lights for this purpose shall be kept operative from sunset to sunrise.

No work shall be commenced in any stage of construction until the barriers and barricades for that stage, indicated on the Plans, or as specified by the



Inspector, are completely in place. The Contractor will be solely responsible for all accidents and damages to any persons and property resulting from its operations. Compliance with prescribed precautions contained herein or in the MDSHA Specifications or Manual On Uniform Traffic and Control shall not relieve the Contractor of its primary responsibility to take all necessary measures to protect and safeguard the work, nor relieve the Contractor from any responsibilities prescribed by GP-7 of the MDSHA Standard Specifications for construction and materials.

The Contractor shall notify and obtain approval in writing from the Contract Manager, at least 48 hours before changing any Traffic Control Phase.

Any construction materials or debris dropped on the roadway surface shall be removed immediately to avoid possible hazardous conditions.

**Materials:** The Contractor shall provide, maintain in first class condition, replace and move when necessary or directed all materials, devices, flagging, etc., required to maintain traffic in accordance with the Traffic Control Plans or as directed by the Contract Manager. Reference is made to the latest edition of the MUTCD, wherein all such items are fully described with regard to use, application, warranties, size, color, placement, etc., and wherein typical traffic control device layouts are shown, as all such devices and techniques planned for use on this project shall strictly conform to the Manual's request except as noted on the Plans.

When any of the following items have been established on the Plans or as directed by the Contract Manager, the Specifications will be adhered to in accordance with the respective sections.

**Lights, Warnings, Etc:** - All banners and imitation barrels shall be adequately illuminated at night, and all lights for this purpose shall be kept operative from sunset to sunrise.

Steady burning warning lights shall be used to delineate channelization through and around obstructions in a construction or maintenance area, on detour curves, on lane closures, and in other similar conditions (MUTCD 6E-4, 6E-5). Flashing warning lights shall be the means for identifying a particular and individual hazard and shall not be used in sequence, in clusters, or for delineation (MUTCD: 6E-5, 6E-6).

Where noted on the plans the first two (2) warning signs shall include a "High Level Warning Device." In addition to the flags the signs shall also be equipped with a Type "B" High Intensity Flag Warning Light. This device must meet the requirements of MUTCD 6C-11 and 6E-5. The device shall be incidental to the Temporary Traffic Sign item if provided for, otherwise the costs shall be considered incidental and no special compensation will be paid.

**Barriers:** Temporary concrete barriers shall be installed on the roadway approaches as shown on the plans and Standard Plat MD 648.13. The barrier shall be precast and conform to subsection 104.04 of the Specifications.

All barriers shall be illuminated at night by the installation of steady burning lights on the barrier. The spacing for the lights shall be 50 feet maximum. The installation brackets for the lights shall be approved by the Contract Manager. Any permanent facilities damaged as a result of anchoring temporary concrete barriers (anchor holes, etc.) shall be repaired to the satisfaction of the Contract Manager using an epoxy grout or other material as may be specified by the Contract Manager. Epoxy grout shall consist of sand and epoxy, mixed by volume according to manufacturer's recommendations.

**Method of Measurement and Basis of Payment:** All work and materials required under the TCP not covered or specified as a pay item on the price proposal form will be included in the lump sum price bid for Maintenance of Traffic. In the absence of such an item the Contractor agrees that there will be no special compensation paid for maintenance of vehicular traffic as described above and the cost shall be considered incidental to the contract and compensated as part of other contract bid item(s).

79. **PARKING, STORAGE AND STAGING AREAS:** Parking, storage and staging areas for the Contractor's use during the Project must have prior approval of the Contract Manager. All areas used for storage of equipment or material shall be restored to their original condition, immediately upon completion of the work. No additional compensation will be provided for restoring, re-grading, placement of topsoil, and seed and mulch in these areas.
80. **PEDESTRIAN TRAFFIC:** Pedestrians shall be safeguarded by the use of signs lights, barricades and barriers as shown on the traffic control plan and/or directed by the Inspector. Pedestrian traffic shall be maintained at all times unless specifically authorized otherwise, in advance, Contract

Manager. The Contractor shall submit a pedestrian traffic safety plan in accordance with the MUTCD, incorporating safety measures and other provisions to fully implement the intent of this paragraph. All work and materials required to prepare and implement the pedestrian traffic safety plan shall be considered incidental to the contract and there shall be no special compensation paid for this item unless special pay items are included in the bid prices. No additional compensation shall be paid for maintenance of vehicular and pedestrian traffic if for whatever reason the project time extends beyond the contract specified completion date or working days.

81. **HANDICAP ACCESS:** Where handicap access exists within the line of work under this contract it will be the contractors responsibility to maintain said access during the life of this contract. This service is considered to be incidental to this contract and no special compensation will be paid for this service unless provided on the Price Proposal page.
82. **TOILET FACILITIES:** Toilet facilities meeting MOSHA standards shall be provided at the job site for all projects exceeding \$100,000 in value and at all other job sites when directed by the City. No special compensation shall be paid unless specifically provided for in the Price Proposal page of this contract. This service shall be considered incidental to the contract.
83. **STAKEOUT-CONSTRUCTION CONTROL:** Survey construction control provided by the City shall be limited to the baseline with stations not over 100 feet, and the elevation of the top of each marked point. P.C.s, P.T.s, P.I.s, P.V.T.s, and at least one point on the tangent beyond the end of each curve will be staked. The Contractor shall request baseline stakeout a minimum of five days in advance of construction. Stakeout data other than stated above will be furnished by the construction Contractor per MDSA Section 815 for structures, otherwise per WSSC specs. section 01000(H) and as described in detail below and these specifications. The City's responsibility for stakeout for the entire project shall be limited to that data described above and this shall be provided only once. The Contractor shall preserve or otherwise ensure adequate survey controls exist throughout the life of the contract.

Surveys and stakeout shall be accomplished by the contractor as outlined above and in conformance with WSSC specifications Section 01000-10-I (H), entitled "Construction Stakeout By Contractor." The provisions therein are primarily for pipeline stakeout. The contractor's responsibilities under this contract are hereby expanded to include, in addition to pipeline stakeout, similar responsibilities for all phases of stakeout necessary to construct all facilities under this contract including but not limited to clearing and grubbing excavation, pavement, curbs and gutters, storm drainage pipes and facilities, culverts, structures, storm water

management facilities, street lights, traffic signal conduits and components, noise walls, retaining walls, ditches and sediment control features.

The stakeout and survey record data shall be preserved and turned over to the City for filing following completion of specific components of work.

**Method of Measurement and Payment:** Generally, stakeout shall be considered incidental to the contract and no special compensation shall be paid, unless a specific pay item is included in the contract Price Proposal page of this contract. Where payment is provided, progress payments for stakeout shall be made based on the percentage resulting from the price bid for stakeout divided by the total bid, multiplied by the monthly payment exclusive of the stakeout payment, except the final payment shall be adjusted as necessary to equal the total price bid for stakeout.

**Grade Sheet by Contractor:** Grade sheets showing hub and design elevations for roadway, water mains, drainage structures and piping, walks, lights, infiltration facilities clearing/grubbing, excavation, and related components will be provided by the construction contractor at least 8 hours in advance of construction and will be subject to approval by the Contract Manager. Stakeout for curb and gutter in all vertical and horizontal curves is to be at intervals of 25 feet or less unless otherwise specifically authorized by the Contract Manager. This work is considered incidental to the contract and no extra compensation will be paid. The grade sheets to be used will utilize the standard City

84. **BURNING DEBRIS NOT ALLOWED:** Under no circumstances will any open fires be permitted for any purpose within the City of Rockville. All debris will be removed and hauled from site (except when otherwise specifically authorized by the Specifications) and disposed in accordance with Local, State and Federal laws in effect at the disposal site. No special compensation will be paid as all costs for off-site disposal shall be included in the applicable bid prices and considered incidental to the contract.
85. **CLEAN UP:** In addition to the provisions regarding clean-up in the Special Provisions, if applicable, the work shall be performed in accordance with the following. Clean up, including the restoration of areas of construction, shall proceed as quickly as is practicable after construction is completed in any given area. This period, between construction and final clean up shall normally not exceed one week. If at any time during the course of the work the cleaning operation in any given area becomes delinquent in the opinion of the Contract Manager he may order that construction be stopped until such delinquent cleaning is completed. Any such order shall not extend the final completion date under this

contract. Unless otherwise indicated, all materials razed, demolished, or otherwise removed from the work site shall become the property of the contractor and shall be disposed of legally and properly off site at his expense.

Upon completion of the work and before acceptance and final payment shall be made, the contractor shall clean and remove from the street, footways, lawns, and adjacent property, all surplus and discarded materials, rubbish and temporary structures, restore in an acceptable manner all property, both public and private, which has been damaged during the prosecution of the work and shall leave the work area in a neat and presentable condition throughout the entire length of the project under contract.

If the Contractor fails to clean up at the completion of the work, the City may do so and the cost thereof shall be charged to the Contractor.

## **SPECIFICATIONS**

### **DESIGN, CONSTRUCTION & PRE-ASSEMBLY SITE WORK AT SWIM CENTER AND FURNISH & INSTALL WATER PLAY SYSTEM (SPRAY GROUND)**

#### **SCOPE OF WORK**

The project consists of **(1)** all design, construction and pre-assembly work including providing all labor, material, equipment, supervision and care necessary to satisfactorily design and install a deck, plumbing, and filter equipment, and **(2)** furnish and install a Water Play System (Spray Ground) at the Municipal Swim Center in accordance with brand name equipment, technical specifications, and drawings contained herein.

#### **LOCATION**

The Rockville Municipal Swim Center is located at 355 Martins Lane, Rockville, Maryland 20850. Call (240) 314-8750 for directions to the site.

#### **PROJECT MANAGER**

The project manager for this project is Mr. Philip Ashworth, Aquatics Facilities Manager, (240) 314-8753.

#### **BRAND NAME “OR EQUAL” SPECIFICATION**

The brand name specifications referenced herein have been identified so as to promote overall economy for the purposes intended and to encourage maximum free and open competition in satisfying the City’s minimum needs. The reference to various manufacturer brand names is not meant to be unduly restrictive but to convey the general style, type, character, size, and quality of the articles desired. Any article which the City in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

#### **WATER PLAY SYSTEM BRAND NAMES (SPRAY GROUND)**

The City has identified for bidding purposes the following manufacturer and models of Water Play Systems (spray ground) deemed acceptable for the purposes intended at the Municipal Swim Center.

#### **SCS Interactive Model 212 Water Play System KoalaPlay Group WaterColors 3 Level Unit White Water West Industries Aqua Play Model AP-300**

Detailed manufacturer “brand name” specifications and drawings are attached and also available by downloading from the City’s website: [www.rockvillemd.gov](http://www.rockvillemd.gov).

**TECHNICAL INQUIRIES** Technical inquiries concerning the above brand name “or equal” specifications should be directed to Mr. Philip Ashworth, Aquatics Facilities

Manager, at (240) 314-8753. Questions requiring clarification of the City's requirements or specifications will be provided by issuance of an Addendum to all bidders.

### **CONTRACTUAL INQUIRIES**

Contractual inquiries concerning the preparation or submission of a bid should be directed to Mr. Basil Boobas, Purchasing Supervisor at (240) 314-8430. Questions requiring clarification of the City's requirements or specifications will be provided by issuance of an Addendum to all bidders.

### **SCHEDULE OF WORK**

Time is of the essence and bidders shall indicate on their Proposal Form the earliest delivery date for completion of each aspect of the project, and a maximum completion time. Work shall commence upon receipt of a City Purchase Order which shall constitute notice to proceed. Contractor may schedule work on Sunday through Saturday from 6:00am – 10:00pm.

### **PRE-BID MEETING & SITE VISITATION**

Bidders are strongly encouraged to attend the pre-bid meeting at 9:00 AM, Monday, November 3, 2003 at the Rockville Municipal Swim Center and fully acquaint themselves with the existing conditions and be fully informed as to any difficulties and restrictions attending the performance of this contract. For directions to the site please call Mr. Philip Ashworth, Aquatics Facilities Manager, (240) 314-8753.

### **QUALIFICATIONS OF CONTRACTOR**

The contractor shall perform all specified work using properly trained, skilled, bonded, and licensed individuals supervised by the contractor. The contractor shall be licensed and bonded in the State of Maryland and shall have a minimum of five years experience in related fields.

### **WORK QUALITY**

All project work shall be performed in a high quality manner. Any work that does not meet specifications shall be removed and corrected at the contractor's expense. Any aspect of the project work resulting in damage to property or equipment shall be restored and made "whole" by the contractor at his expense.

### **MATERIALS**

Materials and equipment furnished by the contractor shall conform to the specification in all aspects, including quality of material, strength, appearance, and workmanship to that which is usually provided by contractors in this trade. The Project Manager shall inspect and approve all materials prior to use and will reject materials that do not meet the specification.

### **SAFETY AND CLEANLINESS**

Contractor shall provide for a neat, clean, and safe environment at all times during the performance of the work. All equipment must be clean and in proper working order. Contractor shall thoroughly clean the job site upon completion of the work.

### **CODE, PERMITS, AND LICENSES**

All work shall comply with any applicable state and local codes and ordinances.

### **WARRANTY**

The warranty must cover all materials and work completed by the contractor for a period of no less than five years.

### **REFERENCES**

Bidders shall complete the City's Reference Form attached and submit it with his bid.

### **MISCELLANEOUS**

- References to the site engineer in the brand name specifications shall be Mr. Philip Ashworth, Aquatics Facilities Manager.
- The contractor will determine the actual footing thickness requirements during the design phase.
- Soil conditions have not been evaluated by the City.
- The City does not have an available pool therefore the contractor must build a deck for the water play system to sit on.
- Installation of supports is part of the construction work to be performed by the contractor.
- Regarding filtration, the system will not be combined with existing systems and therefore the unit will run off its own system to include; filter, pump, surge tank, chemical feeders, and a water leveling system with automatic fill.
- Concerning the supply manifold and piping size which is to be installed beneath the structure, the size of the pipe will be determined during the design phase of the project between the site engineer and the contractor.
- The sizing of the suction pipe for the pump will be determined during the design phase by the site engineer and the contractor.
- Because of cold weather climate, the contractor will be required to provide winterization plugs and draining.
- The design will have a "zero depth" so that the unit can be ADA accessible.
- The thickness of safety resilient surfacing at specific locations around the play structure has been determined to be 3".
- Additional padding (safety surfacing) in other areas will not be required.
- The contractor will not be responsible for providing signage referenced in the brand specifications.

**CITY OF ROCKVILLE  
ROCKVILLE, MARYLAND**

**BID PROPOSAL FORM  
INVITATION FOR BID NO. #40-04  
DESIGN, CONSTRUCTION & PRE-ASSEMBLY SITE WORK AT SWIM CENTER  
AND FURNISH & INSTALL WATER PLAY SYSTEM (SPRAY GROUND)**

**THIS FORM MUST BE COMPLETED, SIGNED AND RETURNED IN DUPLICATE**

The undersigned, having carefully examined the Invitation For Bid, General Conditions and Instructions To Bidders, Specifications and Project Requirements do hereby offer to furnish all labor, equipment, materials, supervision, services, and care necessary to (1) perform all design, construction and pre-assembly work including providing all labor, material, equipment, supervision and care necessary to satisfactorily design and install a deck, plumbing, and filter equipment, and (2) furnish and install a Water Play System (Spray Ground) at the Municipal Swim Center in accordance with brand name equipment, technical specifications and drawings contained herein for the following consideration:

1. Perform all design, construction, pre-assembly site work, and installation of a Water Play System. Price quoted shall include providing all labor, materials, equipment, supervision and care necessary to satisfactorily design and install a deck, plumbing, filter equipment, and the Water Play System. \$ \_\_\_\_\_

\_\_\_\_\_  
(IN WORDS)

COMPLETION DAYS \_\_\_\_\_

2. Furnish and deliver to job site only (do not include installation cost) one each Water Play System in accordance with the following “approved” brands and manufacturers.

(a) SCS Interactive Model #212 Water Play System. \$ \_\_\_\_\_

\_\_\_\_\_  
(IN WORDS)

DELIVERY DAYS \_\_\_\_\_

WARRANTY PERIOD (If other than 5 years) \_\_\_\_\_

NEAREST INSTALLATION \_\_\_\_\_

NAME OF BIDDER: \_\_\_\_\_

(b) Koala Play Group Water Colors 3 Level Unit. \$ \_\_\_\_\_

\_\_\_\_\_  
(IN WORDS)

DELIVERY DAYS \_\_\_\_\_

WARRANTY PERIOD (If other than 5 years) \_\_\_\_\_

NEAREST INSTALLATION \_\_\_\_\_

(c) White Water West Industries Aqua Play Model AP-300. \$ \_\_\_\_\_

\_\_\_\_\_  
(IN WORDS)

DELIVERY DAYS \_\_\_\_\_

WARRANTY PERIOD (If other than 5 years) \_\_\_\_\_

NEAREST INSTALLATION \_\_\_\_\_

DID YOU ATTEND PRE-BID MEETING NOVEMBER 3, 2003? \_\_\_\_\_

ADDENDA

Acknowledgment is hereby made of the following Addenda (identified by number) received since issuance of this bid: \_\_\_\_\_

NAME OF FIRM \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

AUTHORIZED SIGNATURE \_\_\_\_\_

DATE

TYPED SIGNATURE \_\_\_\_\_

PHONE \_\_\_\_\_ FAX \_\_\_\_\_

EMERGENCY PHONE \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

(Please Type)

US TREASURY EMPLOYERS' IDENTIFICATION NUMBER \_\_\_\_\_



NOTE: Firms must use their FULL LEGAL name. Generally, a corporation's name must end with a suffix indicating the corporate status of that business (i.e., Inc., Co., Corp., etc.). Individuals or corporations may indicate trade names with the individual or corporate name followed by "t/a" (trading as) or "d/b/a" (doing business as), respectively. Failure to use your FULL LEGAL name may be cause for rejection of the bid.

**EXCEPTIONS TO SPECIFICATIONS:** All exceptions taken to the specifications contained in this document must be clearly indicated in the space provided below. Unless noted as an exception, the bidder will be held responsible for providing each component or standard called for.

The City Manager for the City of Rockville, Maryland retains the exclusive right to approve or reject any exception taken to the specifications contained in this bid. It is hereby agreed that if this bid is rejected due to an exception taken to a specification by the bidder, the rejection of the bid will be final and no further action may be taken.

Do you claim an exception to any specification in this bid? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



City of Rockville

**REFERENCES**

The bidder shall be a competent and experienced contractor with an established reputation within the community. The bidder shall have performed similar work for a minimum period of five (5) years. He shall furnish a representative list of three (3) projects involving work as specified and the last 2 contracts completed by the firm.

The bidder shall have adequate technically qualified personnel employed within his organization to perform all phases of contract requirements. Ability to meet the foregoing experience requirements shall be considered by the City in determining the responsibility of the bidder. Failure to submit the required information with the Bid Proposal may be cause for rejection of the Bid.

The City may make such investigation as it deems necessary to determine the ability of the Bidder to furnish the services and the bidder shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any bid if the evidence submitted by or investigation of such bidder fails to satisfy the City that such bidder is properly qualified to carry out the obligations of the contract and deliver the service herein.

1. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contract Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Project Value: \_\_\_\_\_ Date: \_\_\_\_\_

Description: \_\_\_\_\_

\_\_\_\_\_

2. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contract Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Project Value: \_\_\_\_\_ Date: \_\_\_\_\_

Description: \_\_\_\_\_

\_\_\_\_\_

**NAME OF BIDDER:** \_\_\_\_\_

**RETURN IN DUPLICATE**

3. Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
Project Value: \_\_\_\_\_ Date: \_\_\_\_\_  
Description: \_\_\_\_\_  
\_\_\_\_\_

LIST THE LAST TWO (2) CONTRACTS COMPLETED BY YOUR FIRM

4. Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
Project Value: \_\_\_\_\_ Date: \_\_\_\_\_  
Description: \_\_\_\_\_  
\_\_\_\_\_

5. Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
Project Value: \_\_\_\_\_ Date: \_\_\_\_\_  
Description: \_\_\_\_\_  
\_\_\_\_\_

NAME OF BIDDER: \_\_\_\_\_

**RETURN IN DUPLICATE**

# AFFIDAVIT

I hereby affirm that: I am the \_\_\_\_\_ and the duly authorized representative of the firm of \_\_\_\_\_ whose address is \_\_\_\_\_

and that I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting.

I further affirm:

## AFFIDAVIT OF QUALIFICATION TO CONTRACT WITH A PUBLIC BODY

1. Except as described in Paragraph 2 below, neither I nor the above firm nor, to the best of my knowledge, any of its controlling stockholders, officers, directors, or partners, performing contracts with any public body (the State or any unit thereof, or any local governmental entity in the state, including any bi-county or multi-county entity), has:

A. been convicted under the laws of the State of Maryland, any other state, or the United States of any of the following:

- (1) bribery, attempted bribery, or conspiracy to bribe.
- (2) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract.
- (3) fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property.
- (4) a criminal violation of an anti-trust statute.
- (5) a violation of the Racketeer Influenced and Corrupt Organization act, or the Mail Fraud Act, for acts in connection with the submission of bids or proposals for a public or private contract.
- (6) a violation of Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland.
- (7) conspiracy to commit any of the foregoing.

B. pled nolo contendere to, or received probation before verdict for, a charge of any offense set forth in subsection A of this paragraph.

C. been found civilly liable under an anti-trust statute of the State of Maryland, another state, or the United States for acts or omissions in connection with the submission of bids or proposals for a public or private contract.

D. during the course of an official investigation or other proceeding, admitted, in writing or under oath, an act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection A or C of this paragraph.

2. [State "none," or as appropriate, list any conviction, plea or admission as described in Paragraph 1 above, with the date, court, official or administrative body, the individuals involved and their position with the firm, and the sentence or disposition if any]. \_\_\_\_\_

3. I further affirm that neither I nor the above firm shall knowingly enter into a contract with the Mayor and Council of Rockville under which a person or business debarred or suspended from contracting with a public body under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland, will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

I acknowledge that this Affidavit is to be furnished to the Mayor and Council of Rockville and, where appropriate, to the

State Board of Public Works and to the Attorney General. I acknowledge that I am executing this Affidavit in compliance with the provisions of Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland which provides that persons who have engaged in certain prohibited activity may be disqualified, either by operation in law or after a hearing, from entering into contracts with the Mayor and Council of Rockville. I further acknowledge that if the representations set forth in this Affidavit are not true and correct, the Mayor and Council of Rockville may terminate any contract awarded, and take any other appropriate action.

## NON—COLLUSION AFFIDAVIT

1. Am fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid;

2. Such bid is genuine and is not a collusive or sham bid

3. Neither the said bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other bidder, firm or person to submit a collusive or sham bid in connection with the Contract for which the attached bid has been submitted or to refrain from bidding in connection with Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the attached bid or of any other bidder, or to fix any overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Mayor and Council of Rockville, Maryland (Local Public Agency) or any person interested in the proposed Contract; and

4. The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

**I do solemnly declare and affirm under the penalties of perjury that the contents of these affidavits are true and correct.**

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Date

\_\_\_\_\_

**( SAMPLE )**  
**C O N T R A C T**  
**For Machinery, Supplies, and/or Services**

**STANDARD FORM OF AGREEMENT BETWEEN THE CITY OF ROCKVILLE  
AND SUPPLIER OR CONTRACTOR**

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between

THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, hereinafter referred to as the "COUNCIL" and

(A) \_\_\_\_\_  
\_\_\_\_\_

hereinafter referred to as the "CONTRACTOR".

WITNESSETH, that the CONTRACTOR and the COUNCIL for the consideration hereinafter named,  
agree as follows:

**ARTICLE 1.** The COUNCIL agrees to pay the CONTRACTOR for the performance of the contract the sum

of \_\_\_\_\_  
\_\_\_\_\_ dollars(\$ \_\_\_\_\_)

**ARTICLE 2.** The CONTRACTOR agrees to furnish performance and payment bonds in such form as shall be acceptable to the COUNCIL, where required in the invitation for bid or the request for quotation, or where required by Maryland Law.

**ARTICLE 3.** The CONTRACTOR agrees to furnish all of the machines, equipment, material, and/or labor

Described in the specifications entitled \_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 4.** The COUNCIL may make any alterations, deviations, additions or omissions from the aforesaid specifications, which it may deem proper, without affecting or making void this contract; and in such cases the COUNCIL shall value or appraise such alterations and recommend the amount added to or deducted from the amount herein agreed to be paid to the CONTRACTOR for the excess or deficiency occasioned by such alterations. In case any alterations or deviations are made, such further time may be allowed for completion of the work, caused by such alterations or deviations as the purchasing agent or an appropriate department head of the City of Rockville shall decide to be reasonable.

**ARTICLE 5.** If the CONTRACTOR shall be adjudged bankrupt or if he shall make a general assignment for the benefit of his creditors, or if a Receiver shall be appointed on account of his insolvency, or if he shall persistently or repeatedly refuse or shall fail, except in case where extension of time is provided, to supply enough properly skilled workmen or proper materials or if he should fail to make prompt payment to subcontractors for materials or labor, or disregard law, ordinances or the instructions of the COUNCIL or otherwise be guilty of substantial violation of any provision of this Agreement, then the COUNCIL may, without prejudice to any other right or remedy, and after giving the CONTRACTOR reasonable notice, terminate the employment of the CONTRACTOR and take possession of the machines, equipment and material already delivered or in process of delivery.

**ARTICLE 6.** The CONTRACTOR and the COUNCIL agree that this Agreement, the Invitation for Bid or the request for quotation and all of the specifications therewith and all modifications thereof constitute the Contract, and that they are fully a part of the Contract as if hereto attached or herein repeated and that for themselves and each of them, their successors, personal representatives and assigns hereby agree to the performance of the covenants herein contained.

**NOTE (A):** The CONTRACTOR shall enter the exact name of the business. An individual trading as a company shall enter: John Doe t/a Masonry Company.

**ARTICLE 7.** The CONTRACTOR, with the execution of this Contract, makes assurance that all materials necessary for the completion of this project are now available to him or will be available so as not to cause delay in the time specified for completion, nor will there be any further expense to the COUNCIL by reason of any special expense imposed by his supplier or fabricator after this Contract is executed.

**ARTICLE 8.** The CONTRACTOR at all times shall observe and comply with all Federal and State Laws and local laws, ordinances and regulations in any manner affecting the conduct of the work; and all such other orders or decrees as exist at present and those which may be enacted later, of bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the Mayor and Council and all of its officers, agents, and servants against any claim or liability arising from or based on the violation of any such laws, by-laws, ordinances, regulations, orders or decrees whether by himself or his employees.

The CONTRACTOR shall indemnify and save harmless the Mayor and Council of Rockville, Maryland, and all its officers, agents and servants from all suits, actions and damages and costs, of every name and description to which the COUNCIL may be subjected or put by reason of injury to persons or property as a result of the work, whether caused by negligence or carelessness on the part of the CONTRACTOR, his servants or agents or to other cause.

IN WITNESS WHEREOF, the said (A)\_\_\_\_\_ and  
the COUNCIL have caused these presents to be signed and sealed.

For  
Corporations.

Corporation:\_\_\_\_\_

\*By: \_\_\_\_\_(Seal)  
*(Either president or vice-president. If other person is authorized, authorization in form of corporate resolution must be attached.)*

Witness: \_\_\_\_\_  
*(Should be secretary or Asst. secretary.)*

\*Corporate seal must be impressed through name of person signing for corporation.

For individuals  
or partnerships.

Name: \_\_\_\_\_ (Seal)  
*(Either owner or partner)*

Witness: \_\_\_\_\_

**MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND**

By \_\_\_\_\_(Seal)  
*City Manager*

**ATTEST:**  
\_\_\_\_\_  
*City Clerk*  
  
Approved as to form and legality  
\_\_\_\_\_  
*City Attorney*

NOTE (A): The CONTRACTOR shall enter the exact name of the business. An individual trading as a Company shall enter: John Doe t/a Doe Masonry Company.

**SAMPLE  
CONTRACT PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That we (1) \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_

a (2) \_\_\_\_\_ and a (2) \_\_\_\_\_

hereinafter call "Principal" and (3) \_\_\_\_\_

of \_\_\_\_\_, State of \_\_\_\_\_

hereinafter called the "Surety", are held and firmly bound unto (4) The Mayor and Council of Rockville, Maryland, hereinafter called "Owner", in the penal sum of \_\_\_\_\_ (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_\_ day of \_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the service of:\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IT WITNESS WHEREOF, this instrument is executed in two (2) counterparts, each one of which shall be deemed an original, this the day of , 20\_\_\_\_\_.

ATTEST

\_\_\_\_\_  
Principal

\_\_\_\_\_  
(Principal) Secretary

By \_\_\_\_\_(S)  
\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Address)

ATTEST:

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Surety) Secretary

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Address)

NOTE: Date of Bond must not be prior to date of Contract.

- (1) Correct name of Contractor
- (2) A Corporation, a Partnership or an Individual
- (3) Name of Surety
- (4) Name of Owner
- (5) If Contract is Partnership, all partners should execute bond



**SAMPLE  
CONTRACT PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: That we (1)\_\_\_\_\_

\_\_\_\_\_ a (2)\_\_\_\_\_

hereinafter called "Principal" and (3)\_\_\_\_\_

of \_\_\_\_\_, State of \_\_\_\_\_  
hereinafter called the "Surety", are held and firmly bound unto (4) The Mayor

and Council \_\_\_\_\_, of Rockville, Maryland, hereinafter called "Owner", in the  
penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the  
United States, for the payment of which sum well and truly to be made, we bind  
ourselves, our heirs, executors, administrators and successors, jointly and  
severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered  
into a certain contract with the Owner, dated the \_\_\_\_\_ day of  
20\_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the  
construction of:

\_\_\_\_\_

NOW, THEREFORE, if the Principal shall promptly make payment to all persons,  
firms, subcontractors, and corporations furnishing materials for or performing  
labor in the prosecution of the work provided for in such contract, and any  
authorized extension or modification thereof, including all amounts due for  
materials, lubricants, oil, gasoline, coal, repairs on machinery, equipment and  
tools, consumed or used in connection with the construction of such work, and  
all insurance premiums on said work, and for all labor, performed in such work  
whether by subcontractor or otherwise, then this obligation shall be void;  
otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby  
stipulates and agrees that no change, extension of time, alteration or addition  
to the terms of the contact or to the work to be performed thereunder or the  
specifications accompanying the same shall in any way affect its obligation on  
this bond, and it does hereby waive notice of any such change, extension of  
time, alteration or addition to the terms of the contact or to the work or to  
the specifications.

(over)

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in two (2) counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of 20\_\_\_\_.

ATTEST: \_\_\_\_\_ Principal

\_\_\_\_\_  
(Principal) Secretary  
BY \_\_\_\_\_(S)  
\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Witness as to Principal  
\_\_\_\_\_  
(Address)

ATTEST: \_\_\_\_\_ Surety  
By \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Surety) Secretary  
\_\_\_\_\_  
Witness as to Surety  
\_\_\_\_\_  
(Address)

NOTE: Date of bond must not be prior to date of Contract

- (1) Correct name of Contractor
- (2) A Corporation, a Partnership or an Individual
- (3) Correct name of Surety
- (4) Correct name of Owner
- (5) If Contractor is a Partnership, all partners should execute the bond